

FILED

Clerk

District Court

DEC 27 2023

for the Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

SUKESH CHANDRA BARMAN,

Plaintiff,

v.

REBECCA MALIUWELUR, in her official capacity as Director of the Guam Field Office of USCIS, and the UNITED STATES OF AMERICA,

Defendants.

Case No. 1:23-cv-00010

**MEMORANDUM DECISION
GRANTING DEFENDANTS' MOTION
TO DISMISS COMPLAINT**

Defendants Rebecca Maliuwelur and the United States of America (collectively "Defendants") filed a motion to dismiss (Mot. Dismiss, ECF No. 5) Plaintiff Sukesh Chandra Barman's complaint (Compl., ECF No. 1) for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Barman filed an opposition (Opp'n, ECF No. 6), to which Defendants replied (Reply, ECF No. 7). The matter came before the Court for a hearing on December 19, 2023, during which time the Court GRANTED the motion to dismiss. (Mins., ECF No. 12.) The Court now issues this memorandum decision detailing its rationale.

I. FACTUAL BACKGROUND

In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"); as a result, citizens of the Commonwealth of the Northern Mariana Islands ("CNMI") became citizens of the United States. *Eche v. Holder*, 694 F.3d 1026, 1027 (9th Cir. 2012) (citing Covenant, Pub. L. No. 94-241, § 301, 90 Stat. 263, 265–66). Notably, the CNMI government "retained nearly exclusive control over immigration to

1 the territory.” *Id.* (citing Covenant § 503(a)). In 2009, the Consolidated Natural Resources Act of 2008
 2 (“CNRA”), Pub. L. No. 110–229, 122 Stat. 754 (2008), was approved by Congress and started the
 3 process to “ma[k]e federal immigration law applicable to the CNMI.” *Id.* (first citing 48 U.S.C. §
 4 1806(a)(1); and then citing Commonwealth of the Northern Mariana Islands Transitional Worker
 5 Classification, 74 Fed. Reg. 55094 (Oct. 27, 2009)). The CNRA made certain provisions of the
 6 Immigration and Naturalization Act (“INA”) applicable to the CNMI. 48 U.S.C. § 1806(a)(1). However,
 7 as explained by the CNMI’s sole representative in the United States Congress, Congressman Gregorio
 8 Kilili Sablan, to the House of Representatives during the discussion of H.R. 559, a certain class of
 9 people, long-term residents, “were not taken into account when Federal immigration was extended to
 10 [the CNMI].” 165 Cong. Rec. 4202 (2019). He explained that “[d]uring the Obama administration, they
 11 were granted humanitarian parole that allowed them to stay” but the Trump administration refused to
 12 grant parole to “categories of people, as had been done in the Marianas. As a result, 1,039 long-term
 13 residents of [the CNMI] lost their parole status last December. They were given until June 29 to adjust
 14 status or leave.” *Id.* But the Trump administration nevertheless “recognized that these long-term
 15 residents should be allowed to stay in the Marianas” and thus “drafted legislation giving these people
 16 permanent status in the Marianas, and just in the Marianas, so they could continue to live and work as
 17 they have for years as part of [the] community.” *Id.* at 4202-03.

20 In June 2019, President Donald Trump signed H.R. 559 into law which became the Northern
 21 Mariana Islands Long-Term Legal Residents Relief Act (“Relief Act”). Pub. L. 116-24, 133 Stat. 977
 22 (2019). It amended the Covenant by inserting a special provision to create a CNMI Long-Term Resident
 23 Status for long-term alien residents who have been lawfully present in the CNMI since November 28,
 24 2009, to allow them to lawfully remain in the CNMI. 48 U.S.C. § 1806(e)(6). The Relief Act granted
 25 the Secretary of Homeland Security (“the Secretary”) the duty to establish an application process and
 26 the discretion to authorize deferred action or parole. 48 U.S.C. § 1806(e)(6)(A)(ii). The Act also granted
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1 the Secretary discretion to establish procedures for advance parole, and to authorize transit of aliens
 2 with CNMI Resident status through Guam to a foreign place. 48 U.S.C. § 1806(e)(6)(A)(iv). Of note,
 3 this statute proscribes judicial review of the Secretary's decision; specifically, it provides that

4 [n]otwithstanding any other law, no court shall have jurisdiction to review any
 5 decision of the Secretary of Homeland Security or the Attorney General on an
 6 application under this paragraph or any other action or determination of the Secretary
 7 of Homeland Security or the Attorney General to implement, administer, or enforce
 8 this paragraph.

9 48 U.S.C. § 1806(e)(6)(D).

10 Barman asserts that he met "all the criteria of eligibility for NM-1 status set forth in the Relief
 11 Act" and applied for NM-1 status on April 29, 2020. (Compl. ¶¶ 10-11.) But Defendant Maliuwelur,
 12 Director of the Guam Field Office of U.S. Citizenship and Immigration Services ("USCIS"), of the U.S.
 13 Department of Homeland Security ("DHS") denied Barman's application on December 30, 2021. (*Id.*
 14 ¶¶ 4, 13.) In March 2022, Barman sought reconsideration of the denial, which Director Maliuwelur also
 15 denied. (*Id.* ¶¶ 14-15.) Thereafter, Barman filed the instant lawsuit seeking "[a] declaration that his
 16 application for NM-1 status met all the statutory criteria of eligibility for such status set forth in the
 17 Relief Act" and "[a] mandatory injunction requiring Defendants to approve his application, grant him
 18 NM-1 statu[s], and issue to [] him all appropriate documentation evidencing such status." (Compl. 4.)

19 **II. LEGAL STANDARD**

20 **A. Subject Matter Jurisdiction**

21 Federal courts are courts of limited jurisdiction empowered to hear only those cases authorized
 22 by the Constitution or by Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
 23 (1994). A court must dismiss a case if it determines that it lacks subject matter jurisdiction. Fed. R. Civ.
 24 P. 12(h)(3). The presumption is "that a cause lies outside this limited jurisdiction," and the party
 25 asserting jurisdiction has the burden of establishing the contrary. *Kokkonen*, 511 U.S. at 377 (citations
 26 omitted).
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B. Facial and Factual Attacks on Subject Matter Jurisdiction

A defendant may move to dismiss a claim for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Rule 12(b)(1) motions are either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack does not challenge the veracity of the plaintiff's allegations, but instead asserts that they "are insufficient on their face to invoke federal jurisdiction." *Id.* Conversely, a defendant bringing a factual attack disputes the truthfulness of the allegations underlying federal jurisdiction. *Id.*

When considering a facial challenge to subject matter jurisdiction, all factual allegations in the complaint “are taken as true and all reasonable inferences are drawn in [the plaintiff’s] favor.” *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (citations omitted). In contrast, for factual challenges, “[t]he court need not presume the truthfulness of the plaintiff’s allegations.” *Safe Air*, 373 F.3d at 1039. Courts may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment. *Id.* Once the moving party has presented affidavits or other evidence for its factual motion, “the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” *Id.* (citation omitted).

III. DISCUSSION

Defendants filed a motion to dismiss facially attacking the complaint and asserting this Court lacks subject matter jurisdiction because “the granting of NM-1 Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status pursuant to 48 U.S.C. § 1806(e)(6) is expressly divested from judicial review pursuant to 48 U.S.C. § 1806(e)(6)(D).” (Mot. 2.) Although Barman concedes that § 1806(e)(6) precludes judicial review of decisions regarding NM-1 status, he contends this preclusion does not apply to the rejections of his application because the preclusion is limited to decisions made by the Secretary of Homeland Security or the Attorney General of the U.S. Department

1 of Justice, and neither official denied his application, rather the Guam Field Office Director for USCIS,
 2 a subordinate official in DHS, did. (*See Opp'n 2.*) Further, Barman maintains that subdelegation of the
 3 Secretary's duties is improper as the statutory purpose of the Relief Act "does not require or favor
 4 subdelegation." (*Id.* at 7.) Based on the Court's review of the Relief Act, and the applicable statutes and
 5 regulation governing the Secretary's authority to delegate his authority, the Court concludes that the
 6 Secretary's subdelegation over adjudicating NM-1 applications is proper; as such, the Relief Act's
 7 preclusion of judicial review over such decisions applies to Director Maliuwelur's denial of Barman's
 8 application.
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10 As Defendants explain, the Secretary's "delegation of authority to the Guam Field Office
 11 Director for USCIS is made pursuant to Department of Homeland Security, Delegation Number: 0150.1
 12 (June 5, 2003) ("Delegation"), specifically paragraphs H, R and BB," which is authorized by 6 U.S.C.
 13 §§ 112(b)(1), 455; 8 U.S.C. § 1103(a)(4); and 8 C.F.R. § 2.1. (Reply 2.) Defendants argue that the
 14 adjudication decision made by the Secretary's delegate is also an action or determination by the
 15 Secretary that is judicially unreviewable. (*Id.*) This Court agrees.
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17 DHS Delegation Number: 0150.1, Section II provides:

18 Pursuant to the authority vested in the Secretary of Homeland Security by law, including
 19 the Homeland Security Act of 2002, I hereby delegate to the Bureau of Citizenship and
 Immigration Services: . . .

20 H. Authority under section 103(a)(1) of the Immigration and Nationality Act of 1952,
 21 as amended (INA), 8 U.S.C. §1103(a)(1), to administer the immigration laws (as
 22 defined in section 101(a)(17) of the INA). . . .

23 R. Authority to grant employment authorization under sections 214(a) or 274A(h)(3) of
 24 the INA (8 U.S.C. §§1184(a) and 1324A(h)(3)), 8 C.F.R. §274a.13, or other applicable
 25 law.

26 BB. Authority under the immigration laws to accept, process and adjudicate any
 27 application for any immigration benefit or service not exclusively under the jurisdiction
 of the EOIR, ICE or CBP, including but not limited to the authority to approve, deny,
 transfer, revoke, rescind, or certify all existing and future immigration, naturalization
 and citizenship benefits. . . .

1 This Delegation has been in effect for over twenty years now, shortly after DHS was established
 2 after the September 11, 2001 terrorist attacks, and there is no evidence that the Delegation was rescinded.
 3 Congress expressly authorized the Secretary to delegate his authority when it passed the Homeland
 4 Security Act of 2002 (“Homeland Security Act”). The Homeland Security Act provides as follows: “The
 5 Secretary [of Homeland Security] -- (1) except otherwise provided by this chapter, may delegate any of
 6 the Secretary's functions to any officer, employee, or organizational unit of the Department.” 6 U.S.C.
 7 § 112(b)(1). It further details that “[u]nless otherwise provided in the delegation or by law, any function
 8 delegated under this chapter may be redelegated to any subordinate.” 6 U.S.C. § 455(c). Under the
 9 Immigration and Nationality Act (“INA”), the Secretary of Homeland Security “may require or
 10 authorize any employee of the Service or the Department of Justice to perform or exercise any of the
 11 powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon
 12 any other employee of the Service.” 8 U.S.C. § 1103(a)(4). The INA’s corresponding regulations,
 13 specifically 8 C.F.R. § 2.1, dictate that:
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15 The Secretary of Homeland Security may, in the Secretary's discretion, delegate any
 16 such authority or function to any official, officer, or employee of the Department of
 17 Homeland Security, including delegation through successive redelegation, or to any
 18 employee of the United States to the extent authorized by law. Such delegation may be
 19 made by regulation, directive, memorandum, or other means as deemed appropriate by
 20 the Secretary in the exercise of the Secretary's discretion.

21 The issue here is the most recent amendment to the Covenant, the Relief Act. The Relief Act, as
 22 well as the entire Covenant, do not have an express authority for the Secretary to delegate his authority.¹
 23 Generally, express statutory authority for delegation to subordinates is not required. *Frankl v. HTH*
 24 *Corp.*, 650 F.3d 1334, 1350 (9th Cir. 2011) (citation omitted). There is a “general presumption that
 25 delegations to subordinates are permissible in cases of statutory silence.” *Id.* However, to determine the
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27 ¹ The CNRA expressly directed the Secretary of Homeland Security to consult with the Secretary of State, Secretary of
 28 Interior, and Secretary of Labor to *assign* their duties, not delegate their duties, as needed to implement the CNRA’s
 federalization of the CNMI’s immigration laws. 48 U.S.C. § 1806(a)(5).

1 applicability of the presumption, a court “must look to the purpose of the statute to set its parameters”
 2 when there is no express congressional authorization for a subdelegation. *Inland Empire Pub. Lands*
 3 *Council v. Glickman*, 88 F.3d 697, 702 (9th Cir. 1996) (quoting *Assiniboine & Sioux Tribes v. Bd. of Oil*
 4 & *Gas Conservation*, 792 F.2d 782, 795 (9th Cir. 1986)). “[D]elegation generally is permitted where it
 5 is not inconsistent with the statute.” *Id.* (citations omitted). Conversely, subdelegation is prohibited if
 6 doing so would frustrate the purpose of the statute. *See Assiniboine & Sioux Tribes*, 792 F.2d at 794.

7 In *Assiniboine & Sioux Tribes*, the Ninth Circuit concluded that the U.S. Secretary of the
 8 Interior’s delegation of authority for applications of oil and gas wells to the Montana Board of Oil and
 9 Gas Conservation was improper. *Id.* at 785. The “statutory and regulatory scheme . . . to achieve
 10 uniformity in tribal leasing matters; to increase Indian authority in granting leases; and to protect the
 11 Indians’ economic return on their property,” were undermined by the subdelegation to an entirely
 12 different entity, especially since the United States was entrusted as a fiduciary to the tribes and “held to
 13 strict standards and is required to exercise the greatest care in administering its trust obligations.” *Id.* at
 14 794-96 (citations omitted).

15 Similarly, in *Crawford-Hall v. United States*, the district court concluded that subdelegation of
 16 the Assistant Secretary of Bureau of Indian Affairs’ ability to decide appeals to the Principal Deputy of
 17 Bureau of Indian Affairs was prohibited as the language of the regulations provided affirmative evidence
 18 of an intent to restrict subdelegation. 394 F. Supp. 3d 1122, 1137-38 (C.D. Cal. 2019). In reaching this
 19 conclusion, the district court observed that a plain reading of the regulations permits only the Assistant
 20 Secretary to issue final decisions on appeals. *Id.* at 1137.

21 Here, because there is no express language within the Relief Act authorizing or prohibiting
 22 subdelegation of the Secretary of Homeland Security’s authority under the Homeland Security Act and
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1 the INA and their regulations already in effect authorizing subdelegation, there is a presumption that the
 2 Secretary can subdelegate so long as the subdelegation would not be inconsistent with the Relief Act.
 3 As demonstrated by the Congressional Record, the purpose of the Relief Act was to provide long-term
 4 residents of the CNMI with permanent status solely in the CNMI so that they can “continue to live and
 5 work as they have for years as part of [the] community.” 165 Cong. Rec. 4202-03. Director Maliuwelur,
 6 as opposed to the Secretary, adjudicating such applications would not frustrate the purpose of providing
 7 permanent status to long-term residents of the CNMI. Unlike the subdelegation in *Assiniboine & Sioux*
 8 *Tribes* between the federal government, who had a heightened fiduciary duty to the tribes, and the
 9 Montana state government that was prohibited, the subdelegation here is within one agency: from the
 10 Secretary of Homeland Security to a Director within USCIS. Additionally, there is not affirmative
 11 evidence of an intent to restrict subdelegation in the Relief Act, in contrast to the clear intent to prohibit
 12 subdelegation in *Crawford-Hall*.
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14 Another district court has similarly found delegation of the Secretary of Homeland Security’s
 15 duties to USCIS permissible such that a statute’s preclusion of the Secretary’s decisions from judicial
 16 review also applied to USCIS’s decisions. *See Taleb v. Mayorkas*, No. CV 22-10409, 2023 WL
 17 1928558, at *3 (E.D. Mich. Feb. 10, 2023). In *Taleb*, the district court recognized that, in the INA,
 18 “Congress granted the Secretary of Homeland Security (or USCIS as a delegate) discretion to decide
 19 whether to adjust the status of a petitioner, and that the INA insulates from judicial review ‘any decision
 20 or action of ... the Secretary of Homeland Security the authority for which is specified ... to be in the
 21 [Secretary’s] discretion[.]’” *Id.* (quoting *Singh v. Dedvukaj*, No. 09-13252, 2010 WL 2089380, at *3-4
 22 (E.D. Mich. May 24, 2010)). Accordingly, the district court “conclude[d] that USCIS’s decision to deny
 23 Plaintiff’s application for adjustment of status, including the factual findings on which that decision is
 24 based, are not subject to judicial review.” *Id.* Just as the district court in *Taleb* found that USCIS’s
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1 decision was not subject to judicial review, this Court similarly concludes that Director Maliuwelur’s
 2 decisions over Barman’s application is not subject to judicial review.

3 Barman argues that even assuming the presumption of subdelegation applies, it does not “prevail
 4 over the countervailing presumption of judicial review.” (Opp’n 7.) A principle of statutory construction
 5 is that there is a “presumption favoring judicial review of administrative action.” *Kucana v. Holder*, 558
 6 U.S. 233, 251 (2010). However, principles of statutory construction, including the presumption of
 7 judicial review over administrative action, only apply “[w]hen a statute is ‘reasonably susceptible to
 8 divergent interpretation.’” *Id.* (citation omitted); *see also Woods v. Carey*, 722 F.3d 1177, 1180-81 (9th
 9 Cir. 2013) (when a “statute’s terms are ambiguous, [however,] we may use canons of construction,
 10 legislative history, and the statute’s overall purpose to illuminate Congress’s intent.” (citation omitted)).
 11 Here, the Court need not even resort to the presumption of judicial review because the Relief Act’s
 12 preclusion of judicial review, even over decisions that were subdelegated, is indisputable; it precludes
 13 judicial review of any decision of the Secretary “on an application under this paragraph or any other
 14 action or determination of the Secretary … to implement, administer, or enforce this paragraph.” The
 15 Court rejects Barman’s arguments to the contrary as illogical and an unreasonable interpretation of the
 16 statute.

19 **IV. CONCLUSION**

20 The 2019 Relief Act was enacted by Congress to give relief to the small finite number of aliens
 21 living in the CNMI “who fell through the cracks” when the 2009 CNRA was passed. 165 Cong. Rec.
 22 4202. In doing so, Congress precluded judicial review of decisions by the Secretary of Homeland
 23 Security over applications submitted pursuant to the Relief Act. Although the decision denying
 24 Barman’s petition was rendered by USCIS Field Director Maliuwelur and not the Secretary, the
 25 authority was delegated by a memorandum and authorized by statutes and regulation, and a preclusion
 26 against judicial review of the Secretary’s decision is a preclusion against one made by his designee.
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1 Accordingly, Defendants' motion to dismiss is GRANTED. The action is dismissed with prejudice and
2 the Clerk is directed to close this case.

3 IT IS SO ORDERED this 27th day of December 2023.

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6 RAMONA V. MANGLONA
7 Chief Judge

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